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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-------------------------|---------------------|------------------|
| 10/780,824  | 02/17/2004  | Edward G. Tiedemann JR. | 030525              | 3723             |
| 23696 7590 07/22/2009<br>QUALCOMM INCORPORATED<br>5775 MOREHOUSE DR.<br>SAN DIEGO, CA 92121 |             |                         |                     |                  |
| EXAMINER  |             |                         |                     |                  |
| RIZK, SAMIR WADIE   |             |                         |                     |                  |
| ART UNIT  |             | PAPER NUMBER            |                     |                  |
| 2112  |             |                         |                     |                  |
| NOTIFICATION DATE   |             | DELIVERY MODE           |                     |                  |
| 07/22/2009  |             | ELECTRONIC              |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

us-docketing@qualcomm.com

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# Office Action Summary

**Application No.**

10/780,824

**Applicant(s)**

TIEDEMANN ET AL.

**Examiner**

SAM RIZK

**Art Unit**

2112

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 April 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 and 40-79 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-23 and 40-79 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

- Response to the applicant's amendment dated 4/23/2009
- Claims 24-39 have been Cancelled
- Claims 1-23 and 40-79 have been submitted for examination
- Claims 1-23 and 40-79 have been rejected

### ***Claim Rejections - 35 USC § 101***

1. In view of the applicant's amended claim 23, all objections to the claim rejections under section **35 USC § 101** are withdrawn.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-5 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 11/747,131. Although the conflicting claims are not identical, they are not patentably distinct from each other because as shown in the chart and explanation below:

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

| Clm | Instant application   | Clm | US Application no.<br>11/747,131   |
|-----|---|-----|--|
| 1   | An apparatus, comprising:<br><br><u>a message generator for:</u><br><u>generating a first message</u><br><u>comprising an acknowledgement</u> | 1   | An apparatus, comprising:<br><br>a scheduler that determines<br>whether to issue a grant to a<br>request for transmission or to<br>adjust a current transmission<br>rate, the determination based at<br>least on one or more channel<br>conditions; and<br><u>a message generator that:</u><br><u>generates a first message</u><br><u>comprising a first indicator for</u> |

|   |  |   |   |
|---|--|---|---|
|   | <p><u>indicator and a rate control indicator, wherein the rate control indicator indicates at least whether a rate control command will be generated and issued; and</u></p> <p><u>generating a second message conditioned on the rate control indicator indicating at least that the rate control command will be generated and issued.</u></p> |   | <p><u>representing an acknowledgment and a second indicator, the second indicator comprising a grant indicator or when the scheduler elects to issue a grant to the request for transmission, and scheduler elects to adjust the current transmission rate; and</u></p> <p><u>generates a second message when the second indicator comprises a data rate control indicator.</u></p> |
| 2 | <p>the apparatus of claim 1, wherein the second message comprises the rate control command. .</p>  | 2 | <p>The apparatus of claim 1, wherein the second message comprises a rate control command.</p>   |

3. Claims 3-5 are rejected over claims 3-5 of the copending application no. 11/747,131 for the same reasons as per claim 2.
4. Claims 6-8 are rejected over claims 6-8 of the copending application no. 11/747,131 for the same reasons as per claim 2.
5. Claims 11-18 are rejected over claims 10 and 13-18 of the copending application no. 11/747,131 for the same reasons as per claim 2.
6. Claims 19-23 are rejected over claims 19-23 of the copending application no. 11/747,131 for the same reasons as per claim 2.
7. Claims 64-79 are rejected over claims 24-36, 38 and 39 of the copending application no. 11/747,131 for the same reasons as per claim 2.
8. Claims 41-53 are rejected over claims 41-53 of the copending application no. 11/747,131 for the same reasons as per claim 2.

***Response to Arguments***

9. Applicant's arguments and amendment of the independent claims 1, 6, 10, 19, 20-23, 40, 41 and 54-64 filed on 4/23/2009 have been fully considered and are persuasive. Claims rejections under section **35 USC § 102(e)** of the office action filed mailed on 1/23/2009 has been withdrawn.
10. Claims 1-23 and 40-79 would be allowable if Applicant overcome the ODP rejection(s), set forth in this Office action.

**REASONS FOR ALLOWANCE**

The following is an examiner's statement of reasons for allowance:

11. Independent claims 1, 6, 10, 19, 20-23, 40, 41 and 54-64 of the instant application teach, for example, an apparatus, comprising:
- a message generator for:
- generating a first message comprising an acknowledgement indicator and a rate control indicator, wherein the rate control indicator indicates at least whether a rate control command will be generated and issued; and
- generating a second message conditioned on the rate control indicator indicating at least that the rate control command will be generated and issued.

**The following limitations are not found in the prior art of record, particularly, none of the prior arts of record teach nor fairly suggest,**

generating a first message comprising an acknowledgement indicator and a rate control indicator, wherein the rate control indicator indicates at least whether a rate control command will be generated and issued; and

generating a second message conditioned on the rate control indicator indicating at least that the rate control command will be generated and issued.

12. Claims (2-5) depend from claim 1.
13. Claims (7-9) depend from claim 6.
14. Claims (11-19) depend from claim 10.

15. Claims (42-53) depend from claim 41.
16. Claims (65-79) depend from claim 64.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Rizk whose telephone number is (571) 272-8191. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronics Business Center (EBC) at 866-217-9197 (toll-free)

/Sam Rizk/

Examiner, Art Unit 2112



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